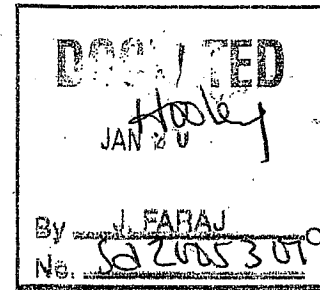


## **EXHIBIT 4**

1 Arcadio Acuna # C-43165  
2 PBP-SHU / FD 3-209  
3 P.O. Box 7500  
4 Crescent City, CA 95532  
5  
6



7 In Pro Per

8  
9 Superior Court of California  
10 County of Del Norte  
11

12 In re

13 No. HCPB-05-5424

14 Arcadio Acuna # C-43165

15  
16  
17 on Habeas Corpus

18 Reply to Informal Response  
19 to Petition for writ of  
20 Habeas Corpus

21 Petitioner, Arcadio Acuna, respectfully submits this  
22 Reply to Respondent's Informal Response to Petition for  
23 Writ of Habeas Corpus received Jan. 03, 2006, and hereby  
24 denies that Respondent has made a showing that due process  
25 was afforded when Petitioner was validated as a member  
26 of a prison gang, and asserts that Respondent has failed  
27 to set forth sufficient facts or law to show why the  
28 requested relief should not be granted. Petitioner

1 asserts that the Informal Response contains grave errors  
 2 of both fact and law, specifically addressed as follows:

3 1. The Gang Validation Process (Response, pp. 1-2)

4 while correctly noting that there is a process for  
 5 validating inmates as prison gang members or associates,  
 6 that Petitioner has a protected liberty interest to remain  
 7 free from confinement in administrative segregation, and that  
 8 in order to have been validated as a member Petitioner  
 9 had to have been shown to have been accepted into member-  
 10 ship based on three independent source items indicative  
 11 of actual membership (Response, pp. 1-2), Respondent fails  
 12 to indicate how the information relied on in this case  
 13 establishes membership in accordance with the criteria  
 14 set forth in the Code of Regulations, Title 15, § 3378(c)(3).  
 15

16 Petitioner herein reasserts that the information relied  
 17 on in the validation is false, and its use did not  
 18 conform to the express requirements of due process as  
 19 identified by the Courts. (see generally Castillo v. Almeida,  
 20 et. al. no. c-94-2847 (N.D. Cal. 2003), also In re Ruben Ruiz  
 21 Del Norte Superior Court no. HCPB-05-5110 [acknowledging  
 22 that more than the limited due process concerning initial  
 23 segregation detailed in Hewitt v. Bell, (1983) 459 U.S. 460,  
 24 is required in cases involving inmates held in PBSP-SHU  
 25 for indeterminate terms of segregation.]).  
 26

27 Moreover, Respondent's allegation that PBSP-SHU inmates  
 28

1 serving indeterminate terms of segregation are considered  
 2 for release to the general population every 180-days by  
 3 Classification Committees (Response, p. 2), and that if  
 4 committees determine any questions exist as to inmate  
 5 gang status the inmate will be referred to IGI, LEIU,  
 6 SSU or DRB for review if incorrect, as it is well  
 7 established and recognized by this court that these  
 8 classification committees are not empowered to overturn  
 9 a gang validation once it has been put in place by  
 10 the LEIU, as a matter of policy and practice do  
 11 not forward questionable evidence to gang officials,  
 12 and are simply meaningless administrative gestures car-  
 13 ried out to generate documentation rubber stamping  
 14 previous decisions (see Petition, Ground 3.)  
 15

## 16 2.) Petitioner's Validation (Response pp. 3-4) 17

18 To begin with, Petitioner submits that by the Informal  
 19 Response and attached Exhibit-3, Respondent concedes  
 20 that at least as to one of the three source items relied  
 21 on in the validation process Petitioner was not given  
 22 in any way shape or form notice as required by  
 23 law. (see Exhibit-4, refiled/wrong confidential memo dated  
 24 Sept. 26, 2000, as one of three source items relied on  
 25 by the LEIU). As such, this denial of due process  
 26 unto itself renders the entire validation process unlawful.  
 27

28 But more importantly, Respondent is patently incorrect

1 is claiming that by an interview held on Dec. 18, 2003,  
2 due process was satisfied as notice was given and  
3 petitioner had an opportunity to challenge the evidence  
4 before the validation package was submitted to the LEIU.  
5 Petitioner asserts that the interview fell far short of  
6 meeting the criteria set forth in the Code of Regulations  
7 and given emphasis by the Castillo decision in that the  
8 chrono dated Dec. 18, 2003, records only that Lt. Garcilazo  
9 may have made vague reference to "some information" he  
10 had supposedly obtained from two confidential sources,  
11 but did not identify any specific conduct to which  
12 petitioner could have made a viable challenge to except  
13 to deny, as he did, any gang involvement and put  
14 emphasis on his good conduct. The chrono also fails  
15 to record that Lt. Garcilazo threatened to send petitioner  
16 back to the SHU by any means necessary if he refused  
17 to become a prison informant.  
18

19 Furthermore, Respondent concedes in the Response that the  
20 confidential information relied on in the validation process  
21 was not disclosed in accordance with departmental regula-  
22 tions via CDC-1070 Disclosure Forms until 4-months after  
23 the validation decision had already been made. (Response,  
24 p. 4, Exhibit-9) A review of the record thus shows  
25 that only when petitioner finally became aware of  
26 the nature of the charges made against him by these  
27

1 disclosures was he able to mount a vigorous challenge  
2 to the information by filing 3 separate CDC-602 appeals  
3 on each of the different source items. (see Respondent's  
4 Exhibit-B, 11.7-15) These appeals reveal that prison  
5 officials, as Respondent, were unresponsive to the issues  
6 raised addressing the validity of the confidential informa-  
7 tion and have never attempted to show that a direct  
8 link exists tying petitioner to verifiable acts of mis-  
9 conduct said to aid and abet, promote or further a  
10 prison gang, nor have they explained how the informa-  
11 tion establishes actual gang membership.  
12

13 In fact, serious due process concerns exist in that  
14 of petitioner was guilty of committing the serious mis-  
15 conduct alleged by the informants, then by not reporting  
16 this misconduct in CDC-115 LVR's as required by the  
17 Code of Regulations, Title 15, § 3312(a)(3), petitioner was  
18 denied the due process he would otherwise have been  
19 afforded pursuant to §§ 3315(c)-(g). This in turn  
20 allowed for false, unreliable and unproven charges to be  
21 relied on to validate petitioner as a gang member and impose  
22 an indeterminate term of segregation based on that status.  
23

24 Respondent in the Informal Response further alleges  
25 that after Petitioner was revalidated, but before he was  
26 returned to the SHU, he had notice and an opportunity  
27 to challenge his housing decision, correctly stating that  
28

1 petitioner attended each of the committee hearings held  
2 at Culpatin State Prison, but there is correctly asserted  
3 that petitioner expressed no disagreement or asserted  
4 any challenges to his segregation at these hearings.  
5 In fact, petitioner vigorously challenged his validation  
6 at every opportunity and expressed to committee members  
7 the grave injustice he was being made to suffer. But, as  
8 is the practice of prison officials these challenges or  
9 comments were not recorded in any way, and the com-  
10 mittees made it clear they had no authority, or incli-  
11 ation to even question the validation once it was  
12 imposed by the LEU. (see petition, Ground 3)

13 Conclusion (Response, p.5)

14  
15  
16 Petitioner denies that Respondent has made a showing  
17 sufficient to warrant denial and dismissal of the petition,  
18 and by this reply denies each and every other allegation  
19 made by Respondent in the Informal Response not other-  
20 wise specifically addressed herein, submitting that as  
21 based on all the papers and pleadings now before the court  
22 relevant to this action a prima facie showing has been  
23 made that he was denied due process in the initial  
24 validation process labeling him a gang member, summar-  
25 ized as follows:

26  
27 A. As conceded by Respondent, petitioner was not given  
28 notice or an opportunity to challenge the information con-



1. tained in confidential memo dated Sept. 21, 2000, before  
2. it was submitted to the LEIU as one of three source  
3. items;

4. B. Petitioner was not given proper notice and an opportu-  
5. nity to challenge the information contained in confidential  
6. memo's dated Sept. 23, 2003, and Dec. 12, 2003, because  
7. they were not disclosed via CDC-1030 Disclosure Forms  
8. until 4-months after the violations had already been  
9. imposed by the LEIU, and that Lt. Garcalazo may  
10. have made reference to some unspecified information  
11. at the interview held on Dec. 18, 2003, was not sufficient  
12. as a matter of law to satisfy due process requirements;

13. C. The confidential information relied on by definition  
14. does not establish petitioner has been accepted into  
15. actual membership of a prison gang;

16. D. The confidential information relied on does not estab-  
17. lish a direct link to any specific and verifiable act  
18. of misconduct showing petitioner aided and abetted,  
19. promoted or acted in furtherance of a prison gang, and,

20. E. By not reporting the alleged serious misconduct made  
21. reference to in the three source items in CDC-115  
22. RVR's as required by the Code of Regulations, petitioner  
23. was denied due process of law and he was illegally  
24. punished for false, unproven accusations.

25. In closing, petitioner submits that a review of



1 his prison file clearly shows he is not, and has never  
2 been a member of a prison gang, and as a 54-yr. old  
3 prisoner who has been continuously confined for more  
4 than 20-yr. has reasonably conformed to behavioral  
5 expectations, has never in those 20-yr. received a  
6 PRK for gang misconduct, has diligently performed  
7 his duties when assigned to numerous prison jobs, and  
8 has been, and continues to be rewarded with classifica-  
9 tion score reductions for his good conduct. Based  
10 on what he was told by Lt. Garcilazo petitioner  
11 asserts he was arbitrarily and without good cause  
12 labeled a gang member and returned to the SHU  
13 because he refused to become a prison informant.

14 I declare under penalty of perjury that all of  
15 the foregoing statement is true and correct, and  
16 was executed on this 5th day of Jan., 2006, in  
17 Crescent City, California.  
18  
19  
20

21  
22 Respectfully Submitted,  
23  
24

25  
26 Arcadio Acuna

27 Arcadio Acuna # C-43165

28 Petitioner, In Pro Per

PROOF OF SERVICE BY MAIL

(C.C.P. section 101a #2015.5; 20 U.S.C. section 1746)

I, Arcadio Acuna, am a resident of Pelican Bay State Prison, in the County of Del Norte, State of California. I am over eighteen (18) years of age and am a party to the below entitled action.

My Address is: P.O. Box 7500; Crescent City, CA 95531.

On the 5th day of Jan., in the year of 2006, I served the following documents: (set forth the exact title of documents served)

Reply to Informal Response to Petition for writ  
of Habeas Corpus

on the party(s) listed below by placing a true copy(s) of said document, enclosed in a sealed envelope(s) with postage thereon fully paid, in the United States mail, in a deposit box so provided at Pelican Bay State Prison, Crescent City, CA 95531 and addressed as follows:

Pamela A. Hookey, Dty. Attorney General  
Department of Justice  
1300 "I" Street, Ste 125  
Sacramento CA  
94244-2550

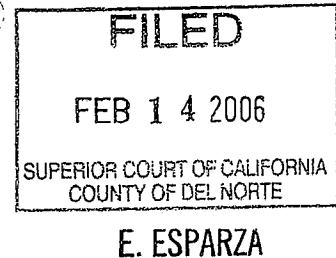
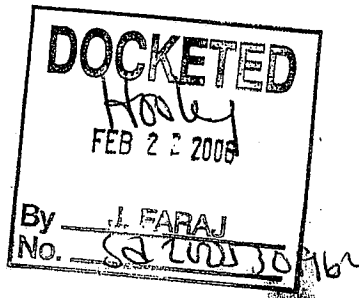
I declare under penalty of perjury that the foregoing is true and correct.

Dated this 5th day of Jan, 2006.

Signed: Arcadio Acuna

(Declarant Signature)

## **EXHIBIT 5**



COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF DEL NORTE

IN RE:

CASE NO.: HCPB05-5242

ARCADIO ACUÑA,  
C-43165,

ORDER TO SHOW CAUSE RE WRIT  
OF HABEAS CORPUS

Petitioner,

On Habeas Corpus.

The Court has read and considered the Petition for Writ of Habeas Corpus and finds a sufficient showing has been made to require a formal response by Respondent. Accordingly, Respondent shall have thirty (30) days to show why relief should not be granted. Within thirty (30) days after service and filing of the Return, Petitioner may serve on Respondent and file a Denial. Failure to file a Denial may be deemed by the Court to be an admission of the allegations of the Return.

Apparently it is not disputed that petitioner was not provided with copies of the CDC 1030 Confidential Information Disclosure forms until after the IGI had apparently prepared and sent off the validation package to the LEIU. The forms are utilized to provide inmates with information so that they can respond to the Institutional Gang Investigator (IGI). Failure to provide the 1030 forms prior to validation would appear to be in violation of the established due process. It is

1 argued by the Attorney General that the petitioner was subsequently provided the  
2 forms prior to an ICC review, which compensates for the failure to disclose the  
3 forms earlier. In light of the fact that the ICC is required to keep inmates in SHU  
4 once they have been validated, it is not clear to the Court how providing the  
5 documents late complies with minimum due process.

6 The Court is also deeply concerned about the sufficiency of the evidence  
7 supporting the validation after *in camera* review of the documents at the informal  
8 response stage. Exhibit "Y" gives detailed information about alleged gang activity  
9 by the petitioner as well as grounds for the memo writer to believe that the  
10 reliability of the confidential source was established. However, validation requires  
11 three independent sources and the Court is not convinced that the legal  
12 requirements have been met.


13 Exhibit "X," the confidential memorandum dated December 12, 2003,  
14 indicates that petitioner may have been told something about gang activities by  
15 another "inactive" associate of the gang. The Return should address whether this is  
16 sufficient to constitute an "independent source item of documentation indicative of  
17 association with validated gang members or associates." The source of the  
18 information appears to be speculating that petitioner had been told something by  
19 the other inactive gang member. It is unclear how that speculation can be  
20 considered to be reliable evidence.

21 Exhibit "Z," the September 21, 2000 confidential memorandum, was  
22 referenced in a corresponding CDC 1030 confidential disclosure form. The 1030  
23 form that was provided to petitioner appears to be incorrect in that it indicates the  
24 "source incriminated himself-herself in criminal activity at the time of providing the  
25 information." No other statement of the reliability is given in the CDC 1030 nor the  
26 memorandum itself. Nor is it clear to the Court how this evidence establishes that  
27  
28

1 the petitioner is involved "periodically or regularly" with associates of the gang. See  
2 15 C.C.R. 3378 (c)(4).

3 George Mavris, Attorney at Law, is appointed to represent the petitioner.  
4 His address is 1 Point St. George, Crescent City, CA 95531. His telephone number  
5 is 707-464-1418.

6 DATED: FEB 13 2006

7   
8 \_\_\_\_\_  
9 WILLIAM H. FOLLETT  
10 Judge of the Superior Court  
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PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P)

I am a citizen of the United States and a resident of the County of Del Norte. I am over the age of eighteen (18) years and am not a party to the entitled action; my business address is 450 H St, Crescent City California 95531.

On Tuesday, February 14, 2006, I served a copy of the **ORDER TO SHOW CAUSE RE WRIT OF HABEAS CORPUS, FILED 2/14/06** by depositing a true copy in the United States mail in Crescent City, California, in a sealed envelope with postage prepaid, addressed as follows:

**ARCADIO ACUÑA, C-43165**  
C/O Pelican Bay State Prison  
P.O. Box 7500  
Crescent City, CA 95532


Harlan Watkins  
Litigation Department  
P.O. Box 7500  
Crescent City, CA 95531

Pamela B. Hooley  
Deputy Attorney General  
P.O. Box 944255  
Sacramento, CA 94244-2550

George Mavris  
Attorney at Law  
[Courthouse Mailbox # 11]

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that it was executed at Crescent City, California this date.

DATED: February 14, 2006

  
\_\_\_\_\_  
Esperanza Esparza  
Judicial Assistant